

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

SA'UD HABIB, BEVERLY WILLIAMS,
J. MARLENE SMITH, KENNETH SLIWINSKI,
AND RUSS DIXON, INDIVIDUALLY AND AS
REPRESENTATIVES OF A CLASS OF SIMILARLY
SITUATED PERSONS, AND ON BEHALF OF THE
M&T BANK CORPORATION RETIREMENT
SAVINGS PLAN,

NO. 16-CV-375-FPG

Plaintiffs,

vs.

M&T BANK CORPORATION, MANUFACTURERS
AND TRADERS TRUST COMPANY, M&T BANK
EMPLOYEE BENEFIT PLANS COMMITTEE,
WILMINGTON TRUST INVESTMENT ADVISORS,
WILMINGTON FUNDS MANAGEMENT CORPORATION,
WILMINGTON TRUST CORPORATION, JANET COLETTI,
MICHELE TROLLI, MARK CZARNECKI, STEPHEN
BRAUNSCHEIDEL, BRIAN HICKEY, DARREN KING,
KEVIN PEARSON, MICHAEL SPYCHALA, BRENT O. BAIRD,
C. ANGELA BONTEMPO, ROBERT T. BRADY, T. JEFFERSON
CUNNINGHAM III, GARY N. GEISEL, JOHN D. HAWKS, JR.,
PATRICK W.E. HODGSON, RICHARD G. KING,
MELINDA R. RICH, ROBERT E. SADLER, JR.,
HERBERT L. WASHINGTON, ROBERT G. WILMERS,
ROBERT J. BENNETT, MICHAEL D. BUCKLEY, JORGE PEREIRA,
COLIN E. DOHERTY, DENIS J. SALAMON,
NEWTON P.S. MERRILL, AND JOHN DOES 1–20,

Defendants.

JACQUELINE ALLEN, INDIVIDUALLY AND ON
BEHALF OF HERSELF AND ALL OTHERS
SIMILARLY SITUATED,

NO. 16-CV-704-FPG

Plaintiffs,

vs.

M&T BANK CORPORATION, MANUFACTURERS
AND TRADERS TRUST COMPANY, M&T BANK
EMPLOYEE BENEFIT PLANS COMMITTEE,

WILMINGTON TRUST INVESTMENT ADVISORS,
WILMINGTON FUNDS MANAGEMENT CORPORATION,
WILMINGTON TRUST CORPORATION,
ROBERT G. WILMERS, MICHAEL P. PINTO,
MARK J. CZARNECKI, AND JOHN DOES 1-40,

Defendants.

DECISION AND ORDER CONSOLIDATING ACTIONS,
APPOINTING NICHOLS KASTER, PLLP AND KESSLER TOPAZ MELTZER & CHECK,
LLP INTERIM CO-LEAD CLASS COUNSEL, AND
APPOINTING TREVETT CRISTO INTERIM LIAISON CLASS COUNSEL

This matter is before the Court on Plaintiffs’ Motions to consolidate the above-captioned actions (the “ERISA Actions”), to appoint the law firms of Nichols Kaster, PLLP (“NK”) and Kessler Topaz Meltzer & Check, LLP (“KTMC”) as Interim Co-Lead Class Counsel, and to appoint the law firm of Trevett Cristo (“TC”) as Interim Liaison Class Counsel (“Local Counsel”). *See* No. 16-CV-704-FPG, ECF No. 10; *See* No. 16-CV-375-FPG, ECF No. 30. Based on the Court’s review of Plaintiffs’ motion papers, and with no opposition from Defendants, those applications are GRANTED, and the Court hereby finds and ORDERS as follows:

I. CONSOLIDATION OF THE ERISA ACTIONS AND SUBSEQUENT OR TRANSFERRED ACTIONS

1. As reflected by the operative complaints in the ERISA Actions, the lawsuits involve common questions of law and fact. Consolidating these actions will conserve judicial resources, avoid unnecessary expense, and promote efficiency and consistency in the litigation of the actions. Accordingly, the above captioned *Habib* Action (No. 16-CV-375-FPG) and the above captioned *Allen* Action (No. 16-CV-704-FPG) are hereby consolidated for all purposes pursuant to FED. R. Civ. P. 42(a).

2. The caption of the consolidated action shall be “*In re M&T Bank Corporation ERISA Litigation*,” and the files of the consolidated action shall be maintained, and all future filings

shall be made under No. 16-CV-375-FPG (the “Consolidated Action”).

3. Plaintiffs in the Consolidated Action shall file a Consolidated Class Action Complaint within 30 days of the date of this Order.

4. If other actions are now pending or are later filed in this District which arise out of or are related to the same operative facts as alleged in the Consolidated Action, counsel shall bring those matters to the attention of the Court, so that they might also be consolidated into this litigation if appropriate under FED. R. CIV. P. 42(a)..

II. APPOINTMENT OF INTERIM CO-LEAD CLASS COUNSEL AND INTERIM LIAISON CLASS COUNSEL

5. Pursuant to FED. R. CIV. P. 23(g)(3), KTMC and NK are appointed as Interim Co-Lead Class Counsel in the Consolidated Action. The Court finds that this appointment is appropriate based on (1) the work that counsel have done identifying and investigating the claims asserted in the Consolidated Action; (2) counsel’s experience handling other class actions and complex litigation, including other ERISA actions; (3) counsel’s knowledge of the applicable law, and (4) the resources that counsel have invested and have committed to invest on behalf of the putative class.

6. Interim Co-Lead Class Counsel shall have the authority over the following matters on behalf of Plaintiffs and the putative class in the Consolidated Action:

- a. Directing, coordinating, and supervising the prosecution of Plaintiff’s claims;
- b. Drafting and filing a Consolidated Class Action Complaint;
- c. preparing and responding to all motions, including any dispositive motion, non-dispositive motion, or motion for class certification;
- d. Initiating and conducting discovery, including without limitation, coordinating discovery with Defendants’ counsel, and preparing and responding to written interrogatories, requests for admission, and requests

for production of documents;

- e. Directing and coordinating the examination of witnesses in depositions;
- f. Retaining experts;
- g. Communicating with the Court and presenting oral argument to the Court;
- h. Communicating with counsel for Defendants and meeting and conferring with counsel for Defendants regarding litigation matters;
- i. Conducting settlement negotiations;
- j. Conducting trial proceedings; and
- k. All other matters concerning the prosecution or resolution of the ERISA Actions.

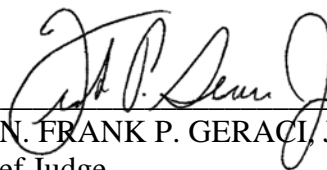
7. In addition, TC is appointed as Interim Local Counsel for this Consolidated Action, pursuant to FED. R. CIV. P. 23(g)(3). Interim Local Counsel shall be responsible for administrative matters, such as facilitating necessary communications between the Court and counsel.

8. Any motions in these consolidated actions on behalf of any Plaintiff shall be filed through Interim Co-Lead Class Counsel.

9. The applications of Edward W. Ciolko, Mark Gyandoh and Julie Siebert-Johnson to appear and represent Plaintiffs *pro hac vice* in this case (No. 16-CV-704-FPG, ECF Nos. 4, 5, 6) are GRANTED.

IT IS SO ORDERED.

DATED: July 26, 2017
Rochester, New York



HON. FRANK P. GERACI, JR.
Chief Judge
United States District Court